

Notice of Allowability

Application No.

10/622,078

Examiner

Jeffrey E. Russel

Applicant(s)

YOUNG ET AL.

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed June 8, 2007.
2. ☒ The allowed claim(s) is/are 18-50,57-62,67-69,71-73 and 75.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>20070702</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Originally-numbered claim 33 (re-numbered claim 16) has been amended as follows:

33. (Currently amended) The kit of claim 30 wherein, in the azide-protected amino acid, PR is selected from the group consisting of Boc, Bpoc, Trityl, Fmoc, ~~Fmoc~~; 2-nitrosulphonyl, dithiasuccinoyl, diphenylphosphinyl, and sulfonyl.

Authorization for this examiner's amendment was given in a telephone interview with Attorney Michael Curtis on July 2, 2007.

The Sequence Listing filed June 8, 2007 is approved.

The species $-(CH_2)_m-$ and $-(CR_2)_m-$, elected in the reply filed on August 17, 2006, have been examined and determined to be novel and unobvious over the prior art of record or any combination thereof. Accordingly, search and examination has been extended to all of the species encompassed by the generic claims.

The following is an examiner's statement of reasons for allowance: The claimed invention is deemed allowable over the prior art of record or any combination thereof. The prior art of record does not teach or suggest compounds having the structure recited in instant claim 18. Accordingly, kits comprising the compound and methods of using the compound are also allowable over the prior art of record. The examiner agrees with Applicants' argument as to why the instant claims are entitled under 35 U.S.C. 119(e) to the benefit of the filing date of

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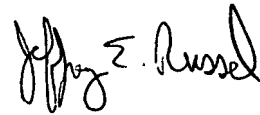
provisional application 60/396,832. Accordingly, the Young PhD thesis is at best available as prior art against the instant claims under 35 U.S.C. 102(a). The declarations under 37 CFR 1.132 by Young and by Kiessling, filed June 8, 2007, show that the Young PhD thesis is not “by others”, and therefore the Young PhD thesis is also not available as prior art under 35 U.S.C. 102(a). Accordingly, the prior art rejections set forth in sections 9-11 of the Office action mailed February 1, 2007 are overcome. The prior art rejections set forth in sections 12-13 of the Office action mailed February 1, 2007 are overcome by the amendments to the claims. The Crimmin et al article (Tet. Lett., Vol. 31, pages 2021-2024) is cited as art of interest, especially for its disclosure of azide-containing compounds 4 and 5. However, the azide substituent in these compounds is attached to a phenyl-CH₂- group rather than to a -CH₂-phenyl- group as is recited in Applicants’ claim definition of M, and there is no motivation or suggestion in the Crimmin et al article to change the orientation of its phenyl-CH₂- group, especially in view of the unknown effect such a change in orientation might have on the activity of the glycopeptide antibiotic which the Crimmin et al article ultimately intends to synthesize.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (571) 272-0969. The examiner can normally be reached on Monday-Thursday from 8:00 A.M. to 5:30 P.M. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Cecilia Tsang can be reached at (571) 272-0562. The fax number for formal communications to be entered into the record is (571) 273-8300; for informal communications such as proposed amendments, the fax number (571) 273-0969 can be used. The telephone number for the Technology Center 1600 receptionist is (571) 272-1600.

A handwritten signature in black ink, appearing to read "Jeffrey E. Russel". The signature is stylized with a large, looped "J" and "R".

Jeffrey E. Russel

Primary Patent Examiner

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JRussel

July 2, 2007